which the court said could be no more than "dummies." *Carney* v. *Penn Realty Co.*, 159 N. Y. Supp. 273. This is "looking beyond the corporate form" with a vengeance! Other cases following the principles of *G. V. B. Min. Co.* v. *Bank* are: *Murphy* v. *W. H. & F. W. Cane, Inc.*, 82 N. J. L. 557, 82 Atl. 854, holding that when shareholders perform the acts normally performed by directors, and in the regular course of business, their acts bind the corporation; *McElroy* v. *Minnesota Percheron Horse Co.*, 96 Wis. 317, 71 N. W. 652, where the corporation was held bound by acts of its president who controlled all but "dummy" stock and without authority exercised the functions of the directors; *Hatch* v. *Johnson Loan & Trust Co.*, 79 Fed. 828, where a note and mortgage, illegally executed by a shareholder, partly for his own debt and partly for that of the corporation, was held to be an equitable charge on the property of the corporation to the extent of the corporation debt. Principles of agency, of equity, and of "natural justice" are involved in these decisions which would seem to deserve careful analysis, in order to determine their force, value and direction. Cf. COOK, CORPORATIONS, § § 709, 663, 664, and 10 CYC. 760, 936, and especially the note in 10 MICH. L. REV. 310.

CORPORATIONS—PROMISSORY NOTE AS CONSIDERATION FOR ISSUANCE OF STOCK.—Stock in the defendant corporation had been issued to the plaintiff in return for his note and trust deed to realty sufficient in value to fully secure the note. The plaintiff seeks the rescission of the contract as invalid under the provision of the Texas Constitution that stock should be issued only for "money paid, labor done, or property actually received." *Held*, that the consideration failed to satisfy the provisions of the statute and that the contract should be rescinded. *Prudential Life Insurance Co. of Texas* v. *Pearson* (Tex. 1916), 188 S. W. 513.

Under statutes and constitutional provisions similar to those in Texas it is almost universally held that a note, even entirely unsecured, is "personal property," and therefore a valid consideration for the issuance of stock. *Quartz Glass & Mfg. Co.* v. *Joyce*, 27 Cal. App. 523, 150 Pac. 648; *German Mercantile Co.* v. *Wanner*, 25 N. D. 479, 142 N. W. 463; *First Nat'l Bank of Ottumwa* v. *Fulton*, 156 Iowa 734, 137 N. W. 1019. But the Texas courts, starting out with the proposition that a note is not "money" and that it is not "property" but "mere evidence of indebtedness," have held (1) a mere note fails to satisfy the statute, *Commonwealth Bonding &c. Co.* v. *Hollifield* (Tex. Civ. App. 1916), 184 S. W. 776; (2) a note secured by a pledge of the stock fails to satisfy the statute, *Republic Trust Co.* v. *Taylor*, (Tex. Civ. App. 1916), 184 S. W. 772; *Kanaman* v. *Gahagan* (Tex. Civ. App. 1916), 185 S. W. 619; (3) a note secured by solvent indorsers and a pledge of the stock fails to satisfy the statute, *McCarthy* v. *Texas Loan and Guaranty Co.* (Tex. Civ. App. 1911), 142 S. W. 96; (4) a note secured by a mortgage or deed of trust fails to satisfy the statute, as held in the principal case and in *Commonwealth Bonding &c. Co.* v. *Hill*, supra. In the last named case, however, the stock was retained in the possession and control of the corporation until the note should be paid and the court therefore held that it

had never been "issued" and upheld the transaction on that ground. The same is true of *Cattlemen's Trust Co.* v. *Pruett* (Tex. 1916), 184 S. W. 716. In the *McCarty* case, which seems to be the leading Texas case on the subject, cases in three states are cited to support the court's construction of the statute. But it is submitted that none of these cases supports the proposition for which they are cited. Thus *Jefferson* v. *Hewitt,* 103 Cal. 624, 37 Pac. 638, decides that a note payable upon condition does not satisfy the statute, while later California cases (see *Quartz Glass & Mfg. Co.* v. *Joyce,* supra) are clearly opposed to the Texas construction. The Pennsylvania cases, *Leighty* v. *Turnpike Co.,* 14 Serg. & R. 434, and *Boyd* v. *Peach Bottom Ry. Co.,* 90 Pa. St. 169, are both under statutes requiring a minimum cash payment on each share of stock issued. The opinion in *Williams* v. *Brewster,* 117 Wis. 370, is cited at some length by the Texas court, and superficially would seem to support its position, but the case itself merely decides that stock issued for a note not yet due is not "paid in."

CRIMINAL LAW—VARIANCE IN CHARGE OF ASSAULT AND BATTERY.—Under an indictment charging defendant, a convict-guard, with assault and battery with a club, the proof showed that the assault was committed with a strap. *Held,* that, as the defendant was not misled as to the subject of prosecution, this was not a fatal variance. *State* v. *Mincher* (N. C. 1916), 90 S. E. 429.

An indictment for assault and battery which charges that accused made the assault on a named person and did unlawfully beat him, is sufficiently specific, though it does not allege what acts constituted the assault, nor in what manner the beating was done. *Sims* v. *State,* 118 Ga. 761, 45 S. E. 621; *State* v. *Clayton,* 100 Mo. 516, 13 S. W. 819, 18 Am. St. Rep. 565; *State* v. *Finley,* 6 Kan. 366. Conceding that such allegation of the means used is unnecessary, what is the effect of so alleging that fact? Is it mere surplusage which does not vitiate the indictment otherwise sufficient, and as such need not be proved, or is it a part of a material allegation of that descriptive nature which requires exact proof? The general rule is stated thus,—"When a material allegation is made unnecessarily precise by a too particular description, the descriptive averment cannot be separated and rejected but must be proven as laid. Whether an unnecessary allegation may be rejected as surplusage, or must be proved as laid, is not always easy to determine. The reason for insisting on proof of the description is that otherwise the defendant would be misled to his harm; though the same reason would in many cases require proof of the allegations rejected under the rule of surplusage." BEALE, CRIMINAL PLEADING AND PRACTICE, § 112. Whether the doctrine of notice be the real foundation for requiring proof of the facts alleged, or not, courts have not been agreed in their application of the rule. In accordance with the above rule, it has been held that where the state elected to try the accused for an assault committed on a particular date in a particular manner, it must prove that the assault was committed on that date by the means alleged. *Graham* v. *State,* 72 Tex. Crim. App. 9, 160 S. W. 714. Also, under an indictment charging assault with a knife, such